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Economic and Social Council

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Committee on Economic, Social and Cultural Rights

Concluding observations on the combined second and third periodic reports of Tajikistan*

1. The Committee on Economic, Social and Cultural Rights considered the combined second and third periodic reports of Tajikistan (E/C.12/TJK/2–3) on the implementation of the International Covenant on Economic, Social and Cultural Rights at its 4th and 5th meetings (see E/C.12/2015/SR.4 and 5), held on 24 and 25 February 2015, and adopted the following concluding observations at its 20th meeting, held on 6 March 2015.

A. Introduction

2. The Committee welcomes the timely submission by Tajikistan of its combined second and third periodic reports, which reflect the State party's efforts to provide an account of the steps taken to implement the recommendations made by the Committee in its preceding concluding observations. The Committee also takes note of the detailed written replies to its list of issues (E/C.12/TJK/Q/23/Add.1) and welcomes the constructive dialogue held with the State party's delegation.

B. Positive aspects

3. The Committee welcomes the State party's ratification of the following human rights treaties since the conclusion of the previous reporting cycle:

(a) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (July 2014);

(b) International Labour Organization Conventions No. 155 (1981) concerning Occupational Safety and Health and the Working Environment, and Convention No. 81 (1947) concerning Labour Inspection in Industry and Commerce (January 2009).

4. The Committee welcomes the adoption of the:

(a) Law on Prevention of Domestic Violence (2013);

(b) Amendments to the Refugee Law (2013);

* Adopted by the Committee at its fifty-fourth session (23 February–6 March 2015).

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(c) Social Protection for Persons with Disabilities Act (2010);

(d) Commissioner for Human Rights Act (2008).

5. The Committee welcomes the State party's efforts to promote the implementation of economic, social and cultural rights, which have included the:

(a) National Strategy to Promote the Role of Women, 2011–2020 (2010);

(b) National Health Strategy, 2010–2020 (2010);

(c) Policy Framework for Transition to a New General Education System (2010);

(d) National Development Strategy for the period up to 2015 (2007).

C. Principal subjects of concern and recommendations

Domestic application of the Covenant

6. The Committee is concerned that the Covenant's impact on the case law of domestic courts may be negatively affected by the insufficient training of judges and legal professionals on the international human rights treaties, in particular the Covenant.

The Committee recommends that the State party take all appropriate measures to ensure the direct applicability of the Covenant provisions to its domestic legal order through adequate training programmes for judges, lawyers and public officials. The Committee draws the State party's attention to its general comment No. 9 (1998) on the domestic application of the Covenant.

7. The Committee is concerned about the lack of effective remedies in the event of violations of economic, social and cultural rights, owing to high lawyers' fees and court costs, as well as limited access to free legal aid by rights holders who need it, in particular victims of violations.

The Committee recommends that the State party take the necessary measures, including legislative measures, to ensure that free legal aid with regard to economic, social and cultural rights is provided to persons who need it, in particular those belonging to disadvantaged and marginalized groups, and that it is adequate with respect to coverage, eligibility and services provided.

Independence of the judiciary

8. The Committee is concerned that, despite the ongoing reforms, the judiciary's independence and impartiality lack effective guarantees. In this regard, the Committee is particularly concerned that the Qualification Committee, which oversees the qualification examinations for judges, is placed under the purview of the Ministry of Justice.

The Committee recommends that the State party take the necessary legal, policy and other measures to ensure the full independence of the judiciary, including by granting the Qualification Committee independent status and laying down other appropriate guarantees in the relevant laws.

National human rights institutions

9. The Committee is concerned that the institution of the Human Rights Ombudsman is not fully independent, noting also in this context the participation of the Ombudsman in the dialogue as part of the delegation of the State party. The Committee further notes that the Institution of the Human Rights Ombudsman has been accredited with "B status" by the International Coordinating Committee of the National Human Rights Institutions for the

promotion and protection of human rights, which means that it is only partially in compliance with the principles relating to the status of national institutions (the Paris Principles).

The Committee recommends that the State party take all the necessary measures to ensure that the Human Rights Ombudsman is an independent institution with the necessary resources to fulfil its mandate in conformity with the Paris Principles, including through implementing the recommendations made by the Sub-Committee on Accreditation of the International Coordinating Committee. The Committee particularly recommends that the State party create all the necessary conditions for the Human Rights Ombudsman to contribute effectively to the enjoyment of economic, social and cultural rights by the people of Tajikistan and to protect victims of violations of these rights.

Civil society

10. The Committee is concerned that the amendments to the Law on Public Associations of 2007, which provide for further inspection procedures for public associations, and new registration and authorization mechanisms for associations receiving foreign funding, may have an adverse impact on the activities of civil society organizations engaged in the promotion and protection of economic, social and cultural rights.

The Committee recommends that the State party consider the comments and recommendations made by civil society and other stakeholders in the review of the draft amendments to the Law on Public Associations, and make every effort to ensure that amendments to the Law strengthen freedom of association and contribute to a more active role for civil society, and thus to the enjoyment of economic, social and cultural rights.

Maximum available resources

11. The Committee is concerned that, despite the establishment of an interdepartmental working group on foreign debt, information on foreign debt and on official development funds that the State party receives from bilateral or multilateral partners is not available (art. 2, para. 1).

The Committee recommends that the State party make information on the situation of foreign debt public, with a view to ensuring the accountability of the responsible authorities and officials and making possible the assessment of the budgetary situation which is necessary for the examination of the compliance by the State party with the Covenant's requirement "to take steps, individually and through international assistance and cooperation ... to the maximum of its [the State party's] available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant" (art. 2, para. 1). To the same end, the Committee recommends that the State party enhance the transparency of the receipt, management and spending of official development funds that the State party receives.

Corruption

12. The Committee remains concerned that, despite numerous measures undertaken by the State party, corruption in the public sector is pervasive and systematic in the country, which is illustrated by the 152nd place occupied by the State party among 175 countries listed on the 2014 Corruption Perceptions Index by Transparency International. It is also concerned about the ineffectiveness of preventive measures and the limited scope of prosecuted cases of corruption, particularly concerning those persons at higher levels of the administration (art. 2, para. 1).

The Committee recommends that the State party step up its efforts to combat corruption by strengthening the enforcement of the 2008 Anti-Corruption Law (and related regulations; ensuring that judges, prosecutors and the police are aware of the need for strict enforcement of that law; introducing preventive measures, such as a zero-tolerance policy; and ensuring, in law and in practice, that public affairs are conducted in a transparent manner.

Non-discrimination

13. The Committee is concerned that there is no comprehensive anti-discrimination law in the State party and that the existing legal provisions are partial and fragmented (arts. 2, para. 2, and 15).

The Committee reiterates its previous concluding observations (E/C.12/TJK/CO/1, paras. 14–16) and urges the State party to expedite the adoption of a comprehensive anti-discrimination law that provides a definition of direct and indirect discrimination and includes all the grounds for discrimination set out in article 2, paragraph 2, of the Covenant. In this regard, the Committee draws the attention of the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

Persons with disabilities

14. The Committee is concerned that the 2010 Law on Social Protection of Persons with Disabilities does not provide a clear definition of persons with disabilities and that the classification of disability, based on the degree of lost ability to work, has led to exclusion from employment of persons with disabilities. The Committee is also concerned at the lack of reasonable accommodation of persons with disabilities, including physical accessibility to buildings and facilities, particularly schools and health-care clinics (art. 2, para. 2).

The Committee recommends that the State party consider reviewing the 2010 Law on Social Protection of Persons with Disabilities with a view to explicitly recognizing denial of reasonable accommodation as a form of discrimination under the law, and adopt all the necessary policy and organizational measures to improve the enjoyment of economic, social and cultural rights by persons with disabilities. In this context, the Committee draws the attention of the State party to its general comment No. 5 (1994) on persons with disabilities. The Committee also recommends that the State party ratify the Convention on the Rights of Persons with Disabilities.

Refugees and asylum seekers

15. The Committee is concerned that, despite legal reforms undertaken by the State party, the access of refugees and asylum seekers to certain urban areas still remains restricted, which, inter alia, limits their access to the labour market, health care, education, housing and other services (art. 2, para. 2).

The Committee recommends that the State party take the necessary steps to lift the restrictions under Presidential resolutions No. 325 (2000) and No. 328 (2004), with a view to ensuring enjoyment by refugees and asylum seekers of the economic, social and cultural rights enshrined in the Covenant, and that it consequently repeal article 499 (part 3) of the Administrative Code, which provides for administrative penalties and the deportation of those in violation of the above-mentioned resolutions.

Equality between men and women

16. The Committee is concerned about the entrenched gender stereotypes which affect the enjoyment by women of their economic, social and cultural rights and result in

significant gender discrimination in all areas of society, particularly in education and employment. The Committee is also concerned at the lack of legislative protection of women against all forms of direct and indirect discrimination and harassment, as well as at the lack of temporary special measures to address gender discrimination in employment and other areas (art. 3).

The Committee recommends that the State party take all the necessary measures to promote gender equality in the enjoyment of economic, social and cultural rights, including:

(a) Raising public awareness of gender equality with a view to eradicating gender stereotypes in the family and society;

(b) Adopting and implementing temporary special measures with a view to addressing gender discrimination in the areas of education and employment;

(c) Ensuring that the 2005 Law on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of Such Rights and other related laws prohibit all forms of discrimination, direct and indirect, as well as harassment, against women;

(d) Increasing the participation of women in leading positions in decision-making bodies at all levels.

In this context, the Committee draws the attention of the State party to its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights.

Unemployment

17. The Committee is concerned that data concerning employment are largely inconsistent, which makes assessments and the development of policies in this respect highly complicated. The Committee is also concerned about the overall weak labour market in the State party, characterized by a high rate of unemployment, especially among women, young people and persons with disabilities; insufficient measures to make employment policies commensurate with the fast growth of the population of employable age; the large share of low-paid work, under subsistence level; and the lack of a skilled workforce (art. 6).

The Committee urges the State party to enhance the quality of its employment data and information, by making them systemic and verifiable, and by continuously updating them.

The Committee recommends that the State party reinforce its efforts to reduce unemployment, in particular unemployment among women, young people and persons with disabilities, including through:

(a) Providing incentives for employers, in the public and private sectors, to create new jobs, especially for women and young people;

(b) Reviewing vocational education and training programmes to meet current labour market demands;

(c) Taking measures targeted specifically at youth and women's unemployment;

(d) Ensuring effective compliance by employers with more than 20 employees with the 5 per cent quota for the employment of persons with disabilities, including by providing for dissuasive sanctions for employers in case of non-compliance.

Informal economy

18. The Committee is concerned at the lack of a clear definition in legislation of the informal economy, which accounts for a very large portion of the total workforce in the State party, making it difficult to assess the situation of workers in the informal economy and to develop effective policies to ensure the protection of their rights that are enshrined in the Covenant (arts. 7 and 8).

The Committee recommends that the State party take the necessary measures to define the informal economy in its legislation and to ensure that workers in the informal sector are not discriminated against in enjoying their economic, social and cultural rights. The Committee also recommends that the State party systematically include the informal economy in the operations of the labour inspection services, address regulatory obstacles to job creation in the formal economy, and raise public awareness of the fact that labour and trade union rights, as well as social protection, apply in the informal economy.

Minimum wage

19. While recognizing that the minimum wage has considerably increased over the past few years, the Committee is concerned that it is still insufficient to ensure a decent living for workers and their family members (art. 7).

The Committee recommends that the State party continue its efforts to raise the minimum wage to a level that can provide workers and their family members with a decent living in accordance with article 7 (a) (ii) of the Covenant.

Discrimination against women in employment

20. The Committee is concerned about the low participation of women in the labour market, persistent gaps in pay and in retirement benefits between women and men, and vertical and horizontal sex segregation in employment that results in women occupying lower-paid jobs in the informal sector (arts. 6 and 7).

The Committee recommends that the State party take all the necessary measures to:

(a) Review all obstacles for women in employment and adopt temporary special measures to promote the access of women to all types of employment and occupation;

(b) Adopt legislative and policy measures to ensure equal pay for women and men for work of equal value, and the same retirement age;

(c) Enhance vocational training, job training and retraining opportunities for unemployed women and women employed in low-paid jobs;

(d) Revise the List of industries, work, professions and positions with hazardous and/or dangerous working conditions in which the use of women's labour is prohibited.

Social security

21. The Committee is concerned that the amounts of the minimum wage, pensions, benefits and other social payments resulting from the indicators identified in the methodological recommendations are too low to ensure an adequate standard of living for recipients and their families. The Committee is also concerned that the new unified pension system under consideration to cover both insurance-based and State-guaranteed payments will have a negative effect on women, a majority of whom work in the informal sector or in low-paid jobs (art. 9).

The Committee recommends that the indicators used to calculate the minimum wage, pensions, benefits and other social payments be increased and reviewed periodically so as to ensure an adequate standard of living for recipients and their families. The Committee also recommends that the State party pay careful consideration to the proposed new unified pension system, taking all the necessary measures to ensure equal access of women to it, in line with article 3 of the Covenant on the equal rights of men and women to the enjoyment of all economic, social and cultural rights.

Tajik migrant workers

22. The Committee is concerned that Tajik migrant workers, particularly those in an irregular situation, often do not have access to education, health care or a social protection system in the countries of employment and are exposed to labour exploitation, and that the State party does not provide them with sufficient protection in this respect (arts. 6, 7 and 10).

The Committee recommends that the State party:

(a) Establish mechanisms to regulate labour migration and protect its migrant workers;

(b) Strengthen consular support and protection for its nationals through increasing the human and financial resources allocated to its embassies and consulates as well as its migration services in the countries of employment;

(c) Step up its efforts to provide strong labour and social protection for Tajik migrant workers and their families, including through bilateral agreements on the organized temporary recruitment of citizens of Tajikistan and on pension entitlements;

(d) Provide counselling and legal advice to potential migrant workers on migration regulations and employment conditions in countries of employment;

(e) Integrate a gender perspective in its labour migration policies, paying special attention to the needs of women migrant workers, as well as of families of migrant workers left behind in Tajikistan.

23. The Committee is concerned that, while a large number of Tajik migrant workers have been deported from and denied re-entry to their countries of employment, the State party has not provided sufficient measures to assist them upon their return.

The Committee recommends that the State party take the necessary steps to support returning migrant workers, including measures aimed at reintegrating them into the labour market in the State party by increasing professional training and creating job opportunities.

Child labour

24. The Committee is concerned that a large number of children (approximately 200,000), mostly from single-parent families and migrant worker families, are involved in child labour, and that 13 per cent of them are working in dangerous conditions and 10 per cent never attend school.

The Committee recommends that the State party intensify its efforts to prevent and combat child labour, including through labour inspections in the agriculture and informal sectors, as well as by ensuring that employers who exploit child labour are held accountable, with particular emphasis on the prosecution of those involved in cases of hazardous work and the worst forms of child labour.

Domestic violence

25. The Committee is concerned that domestic violence is not criminalized as such and remains prevalent in the State party. The Committee is also concerned that cases of domestic violence are underreported and, when they are reported, are not adequately investigated, and that perpetrators often avoid punishment.

The Committee recommends that the State party make domestic violence a crime under its penal law and take measures to ensure the prompt investigation and prosecution of offenders as well as the protection, rehabilitation and compensation of victims. The Committee also recommends that the State party enhance preventive measures, including awareness-raising of the general public and law enforcement officials on domestic violence.

Children in institutions

26. The Committee is concerned that there is a lack of family- or community-based care for children with disabilities and children without parental care, which results in their being placed in institutional care (art. 10).

The Committee recommends that the State party step up its efforts to provide alternative family- and community-based care systems for children with disabilities and children without parental care, and ensure that institutional care is used only as a measure of last resort.

Right to adequate housing

27. The Committee is concerned about the large housing shortage, the significant reduction of funding for public housing, the growing number of forced evictions, particularly of residents of dormitories without alternative accommodation being provided, and the absence of effective measures to provide social housing, especially for disadvantaged and marginalized individuals and groups, and low-income families (art. 11).

Bearing in mind its general comment No. 4 (1992) on the right to adequate housing, the Committee recommends that the State party take all necessary legislative and policy measures to promote affordable rental housing and to make better provision for social housing, in order to meet the needs of disadvantaged and marginalized individuals and groups, and low-income families. The Committee also recommends that the State party ensure that evictions are carried out in compliance with international human rights norms, and establish effective remedial procedures for those forcibly evicted. In this context, the Committee draws the attention of the State party to its general comment No. 7 (1997) on the right to adequate housing: forced evictions.

Access to water, sanitation and electricity

28. The Committee is concerned about the lack of regular access of large parts of the population to safe drinking water and adequate sanitation, as well as about the irregular and insufficient supply of electricity in both urban and rural areas (art. 11).

The Committee recommends that the State party take all the necessary measures to improve access to safe drinking water, adequate sanitation and electricity, and to reduce the current disparities between urban and rural areas in this regard.

Right to adequate food

29. The Committee is concerned about the food insecurity and malnutrition that affect a considerable part of the population, particularly children under 5 and pregnant women (art. 11).

The Committee recommends that the State party take steps to address chronic food insecurity, chronic malnutrition and, in particular, the critical nutritional needs of children and pregnant women. The Committee also recommends that the State party review the Law on Food Security, adopted by decision No. 671 of 29 December 2010, and the Food Security Programme 2009–2015, in the light of the requirements of the 2004 Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, and with a view to ensuring that the beneficiaries of food security programmes:

(a) Receive benefits as a legal entitlement;

(b) Are fully informed about their benefits;

(c) Have access to independent recourse mechanisms if they are denied their benefits.

Right to health

30. The Committee is concerned about the inadequate budget for the health sector and the lack of access to health care by disadvantaged and marginalized individuals and groups, including persons with disabilities, refugees, asylum seekers and people in rural areas.

The Committee recommends that the State party intensify its measures to increase budgetary allocations to the health sector and to ensure that disadvantaged and marginalized individuals and groups have access to adequate health care.

Infant and maternal mortality

31. The Committee is concerned that infant and maternal mortality rates remain high, despite the progress made in this respect (art. 12).

The Committee recommends that the State party step up its efforts to reduce further the high rates of infant and maternal mortality, including by improving the quality, availability and accessibility of primary health-care services. The Committee draws the attention of the State party to the Technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality (A/HRC/21/22).

Prevalence of HIV/AIDS

32. The Committee is concerned that, despite efforts made by the State party, HIV/AIDS and tuberculosis are prevalent, particularly among people who inject drugs and returnee migrant workers (art. 12).

The Committee recommends that the State party step up its efforts to combat HIV/AIDS and tuberculosis, including through more targeted programmes, such as the existing needle exchange programme, the allocation of sufficient resources to implement them, and the strengthening of sexual and reproductive health education.

Trafficking of illicit substances, and drug use

33. The Committee remains concerned that the State party continues to be a destination, as well as one of the main transit routes, for trafficking in narcotic drugs. The Committee is

also concerned about the increasing number of drug users, their poor health and their vulnerability to HIV/AIDS and tuberculosis (art. 12).

The Committee urges the State party to take effective measures to combat the inflow and transit of narcotic drugs and to strengthen its policies with a view to preventing drug abuse, reducing the harm associated with drug abuse and providing adequate treatment and rehabilitation for drug users who require them.

Right to education

34. The Committee is concerned about the high dropout rates among girls and children from families in disadvantaged situations, and about the gender disparity in enrolment and retention rates across all levels of education (arts. 13 and 14).

The Committee recommends that the State party take all appropriate measures to address the problem of high dropout rates among children in disadvantaged situations, including girls, children with disabilities, children belonging to minorities and children of migrant workers or refugees, and to reduce the gender disparity in education.

Quality of education

35. The Committee is concerned that the quality of education remains poor, that the State party suffers from a lack of qualified teachers and of teaching materials, that teachers' salaries are low and that infrastructure and facilities are in poor condition (art. 13).

The Committee recommends that the State party take all the necessary measures to improve the quality of education, through allocating sufficient resources, increasing the number of qualified teachers and their remuneration, and improving infrastructure and teaching materials.

Inclusive education for children with disabilities

36. The Committee is concerned that there is a lack of inclusive education for children with disabilities in the State party and that reasonable accommodation of their requirements is not always provided in mainstream education (arts. 2, para. 2, and 13).

The Committee recommends that the State party promote inclusive education for children with disabilities, including by allocating resources for the provision of reasonable accommodation and additional professional training for teachers.

Linguistic rights of ethnic minorities

37. The Committee is concerned at the decreasing number of classes provided in the languages of ethnic minorities and of students attending schools where the teaching is given in the languages of ethnic minorities, owing to the insufficient number of teachers, the lack of retraining programmes for teachers and a shortage of textbooks in minority languages (art. 13).

The Committee recommends that the State party take the necessary steps to improve education in ethnic languages, and consider adopting multilingual education programmes in the education system.

D. Other recommendations

38. **The Committee encourages the State party to consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**

39. **The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, in particular within the civil service, the judiciary, the Parliament and civil society organizations, and to inform the Committee, in its next periodic report, of the steps it has taken to implement them. It encourages the State party to involve civil society organizations in discussions on the implementation of the present concluding observations, and on the next periodic report prior to its submission.**

40. **The Committee invites the State party to update its common core document in accordance with the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.6, chap. I).**

41. **The Committee requests the State party to submit its fourth periodic report by 30 March 2020, in accordance with the revised reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2).**